

SENATE BILL REPORT

HB 2470

As Reported By Senate Committee On:
Natural Resources, Ocean & Recreation, February 27, 2008

Title: An act relating to clarifying the authority of the department of natural resources to issue lesser contractual agreements within existing authorities for state-owned aquatic lands.

Brief Description: Clarifying the authority of the department of natural resources to issue lesser contractual agreements within existing authorities for state-owned aquatic lands.

Sponsors: Representatives Upthegrove, Dickerson, Hinkle, VanDeWege, Kenney, Kretz, Chase and Warnick; by request of Department of Natural Resources.

Brief History: Passed House: 2/18/08, 95-0.

Committee Activity: Natural Resources, Ocean & Recreation:2/25/08, 2/27/08 [DP].

SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

Majority Report: Do pass.

Signed by Senators Jacobsen, Chair; Hatfield, Vice Chair; Morton, Ranking Minority Member; Fraser, Hargrove, Rockefeller and Stevens.

Staff: Karen Epps (786-7424)

Background: Under current law, the Department of Natural Resources (DNR) may lease state-owned aquatic lands for a variety of uses. In July 2006 (*Northlake v. DNR*, 134 Wash. App 272), an appellate court found that DNR's leasing authority did not explicitly include lesser use authorizations, such as easements, licenses, permits, and rights-of-entry. The court's examination of other DNR authorization statutes found that some statutes included language for lesser use agreement types while others referred only to the authority to lease.

The court found that since the lesser use authorizations were not included in the section governing DNR's leasing authority of aquatic lands, lesser use authorizations were outside of DNR's leasing authority. However, the court did state that DNR has been granted authority to manage state aquatic lands and has authority to issue use permits, generally.

Summary of Bill: DNR's authority to lease state-owned aquatic lands is amended to explicitly include lesser contractual agreements, including easements, licenses, permits, and rights-of-entry unless the context clearly dictates otherwise.

Appropriation: None.

Fiscal Note: Not requested.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: A few years ago, a court decision included a comment that the word lease, when used in statute, does not include the authority to issue lesser use authorizations. DNR is concerned that this court decision may cast a cloud over its authority to issue lesser use authorizations, such as easements, right of ways, and right of entries. This bill clarifies DNR's leasing authority as it applies to aquatic lands. This bill does not change DNR's existing authority, but rather clarifies that authority.

Persons Testifying: PRO: Rich Doenges, DNR.